

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Civil Revision No. 85 of 2007.

Date of Decision: 12th December, 2007.

Narayan Singh

..... Petitioner.

Versus

Chanchalo Devi and another

..... Respondents.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. S.D. Gill, Advocate.

For the Respondents: Mr. Ashok Sharma, Advocate.

Dev Darshan Sud, Judge.

This revision petition has been filed by the petitioner who is the plaintiff before the learned trial court, challenging the order dated 7.5.2007, dismissing the suit of the plaintiff under Order 17 Rule 3 of the Code of Civil Procedure for non prosecution. The order of the trial court passed on 7.5.2007 shows that nobody was present on behalf of the plaintiff when the case was called out three times. The court notices that no evidence had been produced nor any steps taken despite sufficient opportunities having been granted to the petitioner-plaintiff. Taking recourse to the decision of Hon'ble

¹ Whether Reporters of Local Papers may be allowed to see the judgment?

Supreme Court in **Advocate Bar Association Tamil Nadu vs. Union of India AIR 2005 SC 3353** and of this court in **B.N. Mehta vs. Kapoor, Civil Revision Nos. 136 and 137**, the learned trial court proceeded to dismiss the suit under Order 17 Rule 3 of the Code of Civil Procedure.

I have heard learned counsel for the parties. One of the reasons given by the plaintiff for his absence from the court on the day when the case was called out was that the counsel for the petitioner-plaintiff had noted down wrong date of hearing. Learned counsel submitted that for this clerical mistake committed by the learned counsel and his clerk, plaintiff should not be made to suffer. Learned counsel for the plaintiff submits that the learned trial court should have been considerate and the plaintiff should not be made to suffer for acts of his counsel. The case should have been considered in its entirety rather than straightaway dismissing the matter and holding that there has been non compliance of the previous order passed by the court. He relies on the judgment of the Hon'ble Supreme Court in **Rafiq and another vs. Munshilal and another AIR 1981 SC 1400**, followed in **Goswami Krishna Murarilal Sharma vs. Dhan Prakash and others (1981) 4 SCC 574**, **Smt. Lachi Tewari and others vs. Director of Land Records and others AIR 1984 SC 41** and **Smt. Lachi Tewari and others vs. Director of Land Records and others 1984 (supp) SCC 431**.

Looking to the totality of the circumstances on the record and the judgments of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner, the trial court has acted

contrary to the mandate of law in dismissing the suit without consideration of the totality of the circumstances on the record. The ends of justice can be met i-n case the order in revision is quashed and set aside subject to the condition that the plaintiff-petitioner is directed to pay costs of Rs. 4400/- to the defendants on the first date of appearance before the learned trial court and an opportunity is granted to the plaintiff to lead his evidence in support of his claim in the suit. This revision petition is accordingly allowed with the above directions.

Parties shall appear before the trial court on **7.1.2008** on which date costs shall be paid to the defendants, failing which, the order of dismissal passed by the learned trial court shall revive. The plaintiff will also produce his evidence with utmost expedition and will not be granted more than one adjournment for this purpose. Record of the trial court be sent back immediately.

12th December, 2007.
(cm)

(Dev Darshan Sud),
Judge.